



ASSOCIATION of
FISH & WILDLIFE
AGENCIES

The voice of fish and wildlife agencies

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January 26, 2009

Ms. Lillian Woods, Acting Director
Conservation Planning and Technical Assistance Programs Division
USDA-NRCS
PO Box 2890, Room 6015-S
Washington, DC 20013-2890

**RE: Federal Register Doc E8-27657, Interim Final Rule with Request for
Comment on State Technical Committees**

Dear Ms. Woods:

The Association of Fish and Wildlife Agencies (Association) appreciates the opportunity to comment on the interim rule affecting State Technical Committees resulting from a provision in the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). The Association represents the collective perspectives of the state fish and wildlife agencies, and promotes sound management and conservation. All fifty states are members. The state fish and wildlife agencies are very pleased to be official members of the State Technical Committees, and we look forward to strengthening our conservation partnership with NRCS across the country through participation and cooperation as together we implement and deliver the conservation opportunities of the 2008 Farm Bill.

Specific to the interim final rule, we have several concerns highlighted below with recommendations for your consideration and inclusion in the final rule.

1) Section 610.22 State Technical Committee membership. (8) Agricultural producers representing the variety of crops and livestock or poultry within the State;

The rule previously stated that agricultural producers needed to have some level of conservation expertise to participate on the STC. The expertise language was deleted, but we believe it should be reinserted. It would be helpful to other participating producers if members were able to share with the STC membership not only their conservation problems but also conservation resolutions and new innovations or ideas with which they have experience. Consequently, we believe it would be helpful for producers to modify the above section to read as follows: "Agricultural producers representing the variety of crops and livestock or poultry within the State with demonstrable conservation expertise working with Farm Bill conservation programs;"

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2) Section 610.22 State Technical Committee membership. (11)(b) The State Conservationist will invite other relevant Federal Agencies and persons knowledgeable about economic and environmental impacts of conservation techniques and programs to participate as needed.

The 2008 Farm Bill removed the US Fish and Wildlife Service (FWS) from the roster of official State Technical Committee (STC) members. However, participation by FWS staff is not only needed on regular basis because of their role in managing fish and wildlife species affected by conservation practices delivered on the ground, but also because their regular participation ensures that landowners and producers are informed about FWS issues and decisions that could affect farming, ranching, and forestry operations. Additionally, FWS staff could discuss what actions might be helpful to producers and/or species of interest. Furthermore, the FWS's Partners Programs are often delivered to producers and landowners co-mingled with USDA conservation programs. Because they also provide support to producers and private landowners, regular STC participation by FWS staff would be helpful and value-added to STC members as well as to addressing natural resource conservation issues within the state. Therefore, we recommend adding the FWS to the list of invited representatives under Section 610.22(a).

3) Section 610.22 State Technical Committee membership. (11)(d) In accordance with the guidelines in paragraphs (a), (b), and (c) of this section, the State Conservationist establishes membership on the STC. Individuals or groups wanting to participate on a STC within a specific State may submit to the State Conservationist of that particular State a request that explains their interest and outlines their credentials which they believe are relevant to becoming a member of the STC. Decisions of the State Conservationist concerning membership on the committee are final and not appealable to any other individual or group within USDA.

While it is appropriate for the State Conservationist to have a process for determining STC membership, it is not appropriate for the rule to unnecessarily constrain the State Conservationist and his or her decisions and actions through rule. State Technical Committee membership is dynamic, with individuals coming and going as their interest in agricultural and conservation issues change. In agriculture, like other industries, there is a constant churn of retirements, new farmers/ranchers, new landowners, new industries, new agricultural interests, new wildlife conservation groups, and new or different natural resource conservation issues emerging. Finality of decisions should be the discretion of the State Conservationist, and not subject to the rule, as this provision could unnecessarily and unfairly restrict any of the aforementioned interests from participating on the STC should they have previously been declined membership. In some instances, original declination of membership could be based solely on the size, composition, balance and manageability of the committee and not the

qualifications of the applicant. Membership will change over time, and in fairness to potential new members, the rule should not dictate finality of decisions made by the State Conservationist. Furthermore, we could find no basis in law for the restrictive nature of this provision. Therefore, we recommend rewording Section 610.22 (11)(d) to read as follows:

“In accordance with the guidelines in paragraphs (a), (b), and (c) of this section, the State Conservationist establishes membership on the STC. Individuals or groups wanting to participate on a STC within a specific State may submit to the State Conservationist of that particular State a request that explains their interest and outlines their credentials which they believe are relevant to becoming a member of the STC. Decisions regarding membership of STC are the discretion of the State Conservationist.”

4) Section 610.23 State Technical Committee meetings.(b) NRCS shall establish and publish in a Federal Register notice national standard operating procedures governing the operation of STCs and Local Working Groups. ...

We support making the standard operating procedures (SOPs) of STCs and Local Working Groups (LWGs) standardized and public information. We recommend that prior to drafting and publication of the SOPs, NRCS shall solicit from State Conservationists and State NRCS offices substantive input, suggestions and recommendations for creating the SOPs. This will ensure that the SOPs are realistic and supported by the people responsible for implementing the procedures at the State level.

5) Section 610.23 State Technical Committee meetings.(c) In addition to the SOPs established under paragraph (b) of this section, the State Conservationist shall provide public notice of and allow public attendance at STC and LWG meetings. The State Conservationist shall publish a meeting notice no later than 14 calendar days prior to the meeting. ...

We support the minimum 14-day notice for STC meetings and the waiver by the State Conservationist to this advance notice in the case of exceptional conditions.

6) Section 610.24 Responsibilities of State Technical Committees (a) Each STC established under this subpart shall meet on a regular basis, as determined by the State Conservationist, to provide information, analysis, and recommendations to appropriate officials of the Department of Agriculture who are charged with implementing and establishing priorities and criteria for natural resources conservation activities and programs under Title XII of the Food Security Act of 1985, including....

We support the broad nature of this statement, and we support the STC providing recommendations that may include, but are not limited to, recommendations about: (1) the criteria to be used in prioritizing program applications; (2) the state-specific application criteria; and (3) priority natural resource concerns in the state. Because of the dynamic nature of agriculture and weather conditions coupled with the potential for immediate attention to natural resource problems, we recommend the following examples be added to the end of this section to facilitate sharing of information, using the latest technology and science, and capitalizing on STC members' expertise:

- (4) State-specific program policies;
- (5) Conservation practice standards;
- (6) Emerging natural resource needs, issues, or problems;
- (7) Emerging conservation program issues or problems; and
- (8) Concerns that cross-cut among conservation programs.

7) Section 610.24 Responsibilities of State Technical Committees (c) State Technical Committees shall review whether Local Working Groups are addressing State priorities.

We support the STC's role in reviewing whether LWGs are addressing State priorities. However, in order to fulfill this role, decisions and recommendations of LWGs must be communicated directly to the STC and not only to NRCS. We recommend the SOPs clearly articulate that all decisions and recommendations of LWGs be vetted through the STC to ensure State priorities are addressed and conservation opportunities are maximized.

8) Section 610.24 Responsibilities of State Technical Committees (b) ... The Implementing agency reserves the authority to accept or reject the Committee's recommendations. However, the implementing USDA agency shall give strong consideration to the State Technical Committee's recommendations.

We recognize that this section of the rule is based on law, however, we recommend rewording the last sentence to read as follows:
"However, the implementing USDA agency shall give strong consideration to the State Technical Committee's recommendations, and the USDA agency shall address the concerns of the State Technical Committee."

9) Section 610.25 Subcommittees and Local Working Groups (a) Subcommittees.

Because of their statutory authority for management of fish and wildlife, we recommend a representative of the State fish and wildlife agency and a representative of the FWS shall be invited to attend subcommittee meetings.

Participation by these experts will help inform recommendations and decisions made as well as assist producers in navigating the often-complicated issues related to fish, wildlife, and their habitats, and is in the best interests of the producers.

10) Section 610.25 Subcommittees and Local Working Groups (a) Subcommittees. ... Decisions resulting from recommendations of Local Working Groups will be communicated to NRCS in accordance with the standard operating procedures described in 610.23(b).

Because it will be the STC's responsibility to review whether LWGs are addressing State priorities, SOPs must facilitate the sharing of information, including the decisions and recommendations between, the LWGs and the STC.

11) Section 610.25 Subcommittees and Local Working Groups (b) Local Working Groups.(1) A Local Working Group shall be composed of

Because of their statutory authority for management of fish and wildlife, we recommend a representative of the State fish and wildlife agency and a representative of the FWS shall be invited to attend LWG meetings. Participation by these experts will help inform recommendations and decisions made as well as assist producers in navigating some times complicated issues related to fish, wildlife, and their habitats, and is in the best interests of the producers. Furthermore, it may allow for some natural resources needs to be addressed before they are elevated to regulatory needs and builds stronger relationships at the local level.

12) Section 610.25 Subcommittees and Local Working Groups (b) Local Working Groups.(2) Local Working Groups provide recommendations on local natural resource priorities and criteria for conservation activities and programs.

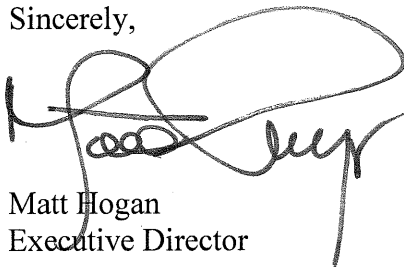
In order for the STC to appropriately evaluate whether LWGs are addressing State priorities, LWGs must provide this information to the STC as well as to NRCS. In order for the STC to fulfill these duties, LWGs must provide transparency in their processes, decisions, and recommendations on local natural resource priorities and criteria for conservation activities and programs. Therefore, we recommend the LWGs provide full disclosure on all decisions and recommendations to the STC on local natural resource priorities and criteria for conservation activities and programs. Data to be provided includes but is not limited to relevance, appropriateness, justifications and the participants involved in the decision process.

13) Section 610.25 Subcommittees and Local Working Groups (b) Local Working Groups.(3) The Local Working Groups will follow the standard operating procedures described in 610.23(b) and the public notice requirements set forth in 610.23(c).

We support the LWGs public notice requirements set forth in 610.23 as currently suggested with a minimum 14-day notice for meetings. This will ensure the appropriate professionals are present to provide the best science-based management information, assist producers with navigating sensitive natural resources issues, and build stronger partnerships and goodwill at the local level.

Again, thank you for your consideration of our comments and recommendations with respect to the interim final rule and changes made to State Technical Committees through the 2008 Farm Bill. Please do not hesitate to contact Mrs. Jen Mock Schaeffer at jenmock@fishwildlife.org or at 202-624-7890 with any questions about our comments, or if we can further assist with this topic in the development of the final rule.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Hogan', with a large, looping flourish above the name.

Matt Hogan
Executive Director